

SECTIONAL ANALYSIS

The purposes of this bill are to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (the Act) for a five-year period, and to make improvements with respect to the fishery management plan review and comment procedures, Regional Fishery Management Council operations, statutory definitions of the terms "overfishing" and "overfished", individual fishing quota programs, fishery law enforcement, the reduction of fishing capacity, the collection and use of economic and social data and confidential information, and a number of other aspects of the Act. In addition, amendments of a corrective nature are made to the Northern Pacific Halibut Act of 1982, the Atlantic Coastal Fisheries Cooperative Management Act, and the Sustainable Fisheries Act.

SECTION 1. SHORT TITLE

This section states that the short title for the bill is the "Fishery Conservation and Management Amendments of 2003".

SECTION 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT

This section provides an abbreviated way to refer to the bill's amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

SECTION 3. DEFINITIONS

This section adds a definition of a new term ("U.S. citizen"), provides a new definition in the Act for the term "overfished", modifies the definition of the term "Exclusive Economic Zone", and eliminates a redundant definition of the term "special areas". The definition of "U.S. citizen" will permit corporate ownership of individual fishing quotas. The "overfished" definition is required because the existing term "overfishing" is being used to refer to both the act of overfishing (i.e., fishing that causes mortality that is too high) and the state of being overfished (i.e., the stock size is too low). Because it is possible to have an overfished stock but no current overfishing, or to have overfishing on a healthy stock, this new definition will create a statutory distinction within the Act between the state of being overfished and the act of overfishing. The modified definition of "Exclusive Economic Zone" clarifies how the inner boundary of the Exclusive Economic Zone (EEZ) is determined under the Act for U.S. commonwealths, territories, and possessions.

SECTION 4. AUTHORIZATION OF APPROPRIATIONS

This section provides authorized appropriations of \$269,391,000 for fiscal year 2003, the President's request of \$296,697,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005-2007.

SECTION 5. TREATY ON PACIFIC COAST ALBACORE TUNA

Subsection (a) of this section amends sections 201, 202, and 207 of the Act to clarify that Canadian fishing vessels may fish for albacore tuna within the U.S. EEZ under the 1981 United States-Canada Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges. At the time the Treaty was entered into, the Act excluded highly migratory species, including tuna, from the definition of "fish" and, therefore, Canadian fishing under the Treaty was not considered "foreign fishing" under the Act. However, in 1992 the Act was amended to include tuna within the meaning of "fish", which inadvertently raised the question whether Canadian albacore vessels were fishing in the U.S. EEZ in violation of the Act, and whether Congress intended to abrogate the 1981 Treaty by banning the fishing. The amendment in this section of the bill will remove any questions and permit continued reciprocal fishing by U.S. and Canadian fishermen under the Treaty.

Subsection (b) of this section authorizes the Secretary to promulgate implementing regulations for the Treaty, allowing the Secretary to enforce the Treaty with respect to Canadian vessels in the U.S. EEZ and U.S. vessels generally.

SECTION 6. MONITORING OF PACIFIC INSULAR AREA FISHERIES

This section amends provisions of the Act that provide for observer coverage of foreign fishing under a Pacific Insular Area fishery agreement. The amendments provide that foreign fishing under such an agreement may be monitored by any program that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with U.S. laws. The existing law appears to require 100 percent observer coverage in these fisheries, and some foreign nations have expressed concern over the high cost of maintaining that level of coverage. The observer costs are passed on to the insular area governments in reduced revenues from the agreements. The changes made under this section recognize that automated vessel monitoring systems have become a valuable tool that can effectively complement an observer program, thus enabling the foreign fishing to be monitored successfully at a lower cost.

SECTION 7. CARIBBEAN COUNCIL JURISDICTION

This section amends the Act to expand the Caribbean Fishery Management Council's jurisdiction. Current law gives the Council jurisdiction over the fisheries seaward of the Virgin Islands and Puerto Rico, which are both defined under the Act as "States." The amendment under this section extends the Council's jurisdiction to the other territories and possessions in the Caribbean. This will enable the Council to address the conservation of coral reefs, reef fish, queen conch, and spiny lobsters in areas not now under its jurisdiction.

SECTION 8. NOTICE OF COUNCIL MEETINGS

This section amends the Act with respect to the manner in which the Regional Fishery Management Councils (Councils) must notify the public of the times of regular and emergency meetings, and provide notice of closed meetings. The current law requires these notices to be published in local newspapers in the major fishing ports of the affected region. The amendments under this section relieve the Councils of the burden of publishing notices in the local newspapers, which is more expensive and less effective in reaching target audiences than e-mails, public service announcements, and notices included in marine weather forecasts. These amendments will permit the Councils to use any means of notification that will result in wide publicity.

SECTION 9. FISHERY MANAGEMENT PLAN REQUIREMENTS

This section amends section 303(a)(5) of the Act to expand the categories of data that must be submitted in connection with a fishery management plan and to enable the Secretary and the Councils to conduct regulatory assessments that evaluate the social and economic impact of management measures. This amendment requires a management plan to include information on harvest and processing revenues, by species, production costs, capital expenditures, and other fishing or processing costs.

SECTION 10. SUBMISSION OF ECONOMIC DATA

This section amends section 303(b)(7) of the Act concerning discretionary contents of fishery management plans. The amendment will enable the Councils and the Secretary to require fish processors to submit economic data related to the affected fishery. Economic data from processors is a key body of information to understand the economics of federally managed fisheries. This change should improve the Secretary's ability to accurately predict the impact of proposed fishery management regulations while continuing to protect confidential data under other provisions of the Act.

SECTION 11. INDIVIDUAL FISHING QUOTAS

This section amends section 303(d) to establish the standards and guidelines that will govern the development and administration of new IFQ programs. Specific standards and guidelines that are addressed in this section address (1) allocations and transfers, (2) cost recovery, and (3) program approval, review, and administration.

Under the provisions of this proposal, allocations of quota in new IFQs will be fair and equitable, maintain as much as possible the cultural and social framework of the fishery, avoid excessive concentration of ownership, and exclude foreign participants. Councils should establish a policy on eligibility for participation, and consider an auction system or some other program to collect royalties. Mandatory IFQ fees fall in three categories and are capped at 5 percent of ex-vessel revenues. This proposal also spells out the detailed provisions governing the roles of the

Secretary and the Councils in deciding to develop IFQ programs, and, when such a program has been developed, in its final approval. Finally, quotas granted under IFQ programs are privileges and do not confer rights, title or interests, and may be rescinded without compensation.

SECTION 12. ACTION BY THE SECRETARY

This section makes changes in the Act's review and implementation process for fishery management plans and amendments, and their implementing regulations. These changes are intended to ensure that the Secretary is not required to make a decision on a Council's plan or plan amendment before the end of the comment period for the implementing regulations for the plan or plan amendment.

First, the Secretary is required to make a preliminary evaluation of the Council plan or amendment to determine whether it is (1) consistent with the national standards, the other provisions of the Act, and other applicable law and (2) sufficient in scope and substance to warrant a review. If the determination is negative, the amendment allows the Secretary to immediately return it to the Council with guidance on what needs to be corrected. This provision will save valuable time since current provisions require the Secretary to wait until after the 60-day comment period to disapprove a proposed action. If the determination is positive, the Secretary must publish a notice of availability of the plan or amendment, and the proposed implementing regulations, in the *Federal Register* within 15 days of transmittal of the plan or amendment by the Council. The comment period is required to be 50 days. Where a Council submits proposed regulations simultaneously with a plan or amendment, the Secretary is required to promulgate the final regulations within 45 days after the end of the comment period. However, where the Council submits the proposed regulations after approval of the plan or amendment, the comment period for those regulations is required to be 15-60 days and the Secretary must promulgate final regulations within 30 days after the end of the comment period.

This section also amends section 304(b) of the Act to clarify that actions to be taken under framework provisions of a fishery management plan are not subject to the deadlines and other regulatory procedures of section 304(a) and other provisions of section 304(b). Framework actions, which are necessary for timely management of fisheries, would be consistent with the framework provisions of the fishery management plan and with section 553, title 5, United States Code.

SECTION 13. REBUILDING OVERFISHED FISHERIES

This section makes necessary changes in the terms of reference of the annual report to Congress on the status of federally managed fisheries. These changes are required by the amended definitions of overfishing and overfished that are discussed in section 3. Essentially, these amendments stipulate that the annual report to Congress will address both overfishing (a measure of fishing effort) and overfished fisheries (a measure of the biological status of a stock).

SECTION 14. EMERGENCY REGULATIONS

This section extends by six additional days the length of the second emergency regulation or interim measure that may be taken under the Act to respond to an emergency or overfishing in a fishery. This change means that the first 180-day emergency period can be extended with a second emergency period of 186 days, thus enabling emergency management of a fishery over a full 12 months. The most common situation where a full year of emergency management is needed is when a fishery management plan has to be implemented by emergency regulations. In addition, this section corrects an error in the existing law related to the early termination under the Act of an interim measure.

SECTION 15. JUDICIAL REVIEW OF CERTAIN ACTIONS OF THE SECRETARY

This section amends the Act to require that challenges to determinations by the Secretary under a fishery management plan must be filed within 30 days after the determination becomes a final agency action. An example of such a determination is when competing applicants seek the same limited entry permit and one of them obtains the permit. Under existing law, a losing applicant for that permit would be able to wait for six years before seeking judicial review. A person who wants to challenge regulations or other agency actions under fishery management plans, like a fishery closure, must act within 30 days under existing law. This section simply applies this same judicial review deadline to these other kinds of actions by the Secretary. The amendments under this section ~~that~~ make clear the Secretary's determination of eligibility under a limited access system is subject to the 30-day judicial review deadline.

SECTION 16. INCREASE IN MAXIMUM PENALTIES

This section increases the maximum civil penalty for a violation of the Act to \$200,000. It also doubles the Act's criminal penalties, boosting to \$200,000 the maximum fine for a fishing violation under section 307(1) of the Act and to \$400,000 the maximum fine for using a dangerous weapon in committing a fishing violation, injuring an observer, placing an observer or law enforcement officer in fear of imminent bodily injury, or committing a violation described in section 307(2) of the Act. An increase in the maximum penalty available under the Act is justified to provide for an adequate response to the most serious violations. A higher maximum is a necessary enforcement tool to both punish and deter the egregious, large-scale and repeat violators. The possibility of higher penalties will help to ensure that entities do not view monetary penalties imposed under the Act as merely a cost of doing business.

SECTION 17. SUBPOENA POWER FOR INVESTIGATIONS

This section amends section 308(f) of the Act to allow the Secretary to use subpoenas in the investigation of alleged violations of the Act and other marine resource laws enforced by the Secretary. Existing law authorizes subpoenas for civil penalty hearings but not for the investigations of alleged violations. This situation deprives the Secretary of the ability to fully investigate alleged violations prior to issuance of a Notice of Violation and Assessment (NOVA)

and the alleged violator's request for an administrative hearing. This amendment will ensure that the Secretary has the tools needed to conduct a thorough investigation before the decision to issue a NOVA or assess a penalty.

SECTION 18. PERMIT SANCTIONS

This section amends section 308(g) of the Act to provide that the transfer of ownership of a permit or any interest in a permit does not extinguish an applicable permit sanction. Current law provides that the transfer of vessel ownership does not extinguish a permit sanction, but does not address situations where permits are issued to persons instead of vessels. This amendment eliminates a loophole in the law where permits are issued to persons. The amendment also requires prior written notice to prospective transferees of the permit or interest regarding any permit sanction that will be in effect or pending at the time of transfer.

This section also amends section 304(g) of the Act to clarify that a permit suspended for nonpayment of any amount in settlement of a civil forfeiture must be reinstated upon payment of that amount, together with interest.

SECTION 19. FORFEITURE OF CATCH FOR CITATION

This section amends section 310 of the Act to authorize the forfeiture of fish taken or retained in connection with, or as a result of, an act for which a citation (i.e., a written warning) under section 311(c) of the Act is sufficient sanction. However, the amendment does not change the provisions of the Act with respect to forfeiture of vessels.

SECTION 20. FISHING CAPACITY REDUCTION PROGRAM

This section amends section 312 of the Act to improve the effectiveness of fishing capacity reduction programs (buyback programs). Such buyback programs can help reduce harvesting capacity to biologically and economically sustainable levels, at little cost to the taxpayer. They can also help lay the foundation for IFQs, cooperatives, permit stacking, or other devices. Under the new provisions, a broad framework regulation would control aspects that are common to all buyback programs; additional program-specific regulations would address the particular details of each fishery, as necessary. If a particular buyback program were to be industry-funded, a referendum of participants in the fishery would be required.

SECTION 21. COLLECTION OF INFORMATION

This section amends section 402 of the Act to provide the Secretary with the authority to implement an information collection or observer program requiring submission of any additional information the Secretary determines to be necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management.

This section also amends section 402(a) of the Act to increase the categories of information the

Secretary may collect at the Councils' request. In particular, this amendment eliminates current language in the Act that precludes the Secretary from collecting proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations. This change will permit the Secretary to collect that information, at the Councils' request, and will make it easier for the Secretary and the Councils to prepare adequate analyses and regulatory assessments required in the development of fishery management plans and plan amendments.

SECTION 22. ACCESS TO CERTAIN INFORMATION

Subsection (a) of this section amends section 402(b) of the Act to promote cooperative fishery enforcement agreements between the States and the Secretary. Recent efforts to increase the role of the States in enforcing the Act and other Federal fishery laws have been hindered by the existing law, which limits the Secretary's authority to disclose confidential information submitted by any person in compliance with any requirement of the Act. This amendment authorizes the Secretary to disclose that information to State employees who are responsible for fishery management plan monitoring as long as they are employed by States that have entered into a fishery enforcement agreement.

Subsection (b) further amends section 402(b) of the Act to permit the Secretary to disclose confidential information submitted in support of applications for limited entry permits. Much of the information required for the Secretary to determine qualifications for limited entry permits includes business and financial information that must be analyzed by the Secretary. The amendment under this section allows the basis for the Secretary's decision in these matters to be public, and provides a more transparent process.

SECTION 23. FUNDING FOR FISHERY OBSERVER PROGRAMS

This section eliminates the provisions under section 313 of the Act that authorize the North Pacific Council to prepare a fisheries research plan that requires the stationing of observers on fishing vessels in the North Pacific and the establishment of a system of fees to pay for the costs of implementing the plan.

In lieu of those provisions, this section adds new provisions to section 403 of the Act, authorizing the Secretary to establish funding mechanisms for the cost of observer programs established under the Act or any other statute administered by the Secretary. Before a funding mechanism may be instituted to cover the cost of an observer program established under a fishery management plan, the mechanism must first be recommended by the Council responsible for the plan. These new provisions authorize the Councils and the Secretary to exercise broad discretion in the development of funding mechanisms, including a system of fees or any other cost recovery mechanism to pay for the cost of implementing, evaluating, and administering the observer program.

These funding mechanisms may include revenues generated from establishment of an IFQ program, as provided for in Section 11. Funds collected under this authority must be deposited into a new Fishery Observer Fund created by this section and must be limited to the particular

program for which it was established, except where a specified part of those moneys is directed to be used for support of national or multi-region observer program activities. The new provisions of section 403 specify the conditions under which observer programs may be funded through contractual agreement made directly between the owner or operator of a fishing vessel or U.S. fish processor and any non-governmental observer provider company. Fishery management plans and regulations that allow for direct contractual agreements like this must be modified within three years after the date of enactment of this bill to prohibit those agreements and restructure the funding mechanisms in accordance with the requirements of section 403, or come into compliance with the specified conditions. Finally, authority is provided for the Secretary to accept and solicit donations and requires that funds collected as a result of these donations be deposited in the Fishery Observer Fund.

SECTION 24. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT

This section amends section 8 of the Northern Pacific Halibut Act of 1982 to increase the maximum civil penalty to \$200,000 and to authorize permit sanctions under that Act. The new permit sanction authorization is modeled on the permit sanction regime under section 308(g) of the Act. This section also amends section 9 of that Act to increase the maximum fines to \$200,000 for a fishing violation under that Act and to \$400,000 for using a dangerous weapon in committing a fishing violation, engaging in conduct that causes bodily injury to an enforcement officer, or placing an enforcement officer in fear of imminent bodily harm.

SECTION 25. MAINE POCKET WATERS

This section corrects the coordinates stated in section 809 of the Atlantic Coastal Fisheries Cooperative Management Act for the Federal waters known as "Maine pocket waters." That Act was amended in 1996 to exempt Maine commercial lobster fishing permit holders from Federal permitting requirements in Maine pocket waters.

SECTION 26. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS

This section makes a technical amendment to section 111 of the Sustainable Fisheries Act to clarify that Western Pacific communities with indigenous inhabitants are eligible for fishery demonstration projects under that section, even if those communities have not developed and submitted a community development program under section 305(i)(2)(B)(v) of the Act to provide fisheries access to indigenous communities.